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July 2, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Amendment of Parts 21 and 74 To Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage In Fixed Two-Way Transmissions -- MM Docket No. 97-217 and RM-9060: EX PARTE COMMUNICATION*

Dear Ms. Salas:

I am writing in response to the Commission's June 12, 1998 *Public Notice* in MM Docket No. 97-217 to express the strong support of COMWAVE for expeditious adoption of the new technical rules and policies proposed by the over 110 wireless cable operators, ITFS licensees, MDS licensees and equipment vendors that commenced this proceeding (the "Petitioners"). Simply put, the Petitioners have successfully crafted a regulatory regime that fairly protects existing MDS and ITFS operations, while at the same time permitting the rapid deployment of two-way facilities in a manner that will be commercially viable.

COMWAVE is a manufacturer of transmission systems focusing solely on the MMDS/Wireless Cable marketplace.

As the Commission considers the issues in this proceeding, it should recognize that the Petitioners undertook a herculean task: affording protection to existing MDS and ITFS facilities equivalent to what they enjoy today, while at the same time permitting the rapid inauguration of two-way services. The technical rules proposed by the Petitioners, coupled with the methodologies advanced for demonstrating compliance with those rules, accomplish those

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objectives in a manner that is reasonable and fair. While a small minority have expressed vague concerns, the paucity of counter-proposals speaks volumes as to how successful the Petitioners have been. Save for the Catholic Television Network ("CTN") (who evidences no concern for the commercial viability of two-way services, ignoring the vast number of ITFS licensees who rely on the success of their commercial partner), every party commenting in this proceeding has explicitly or implicitly recognized that the rules must permit the immediate installation of response stations upon subscriber demand, without delays for licensing or testing. The proposed rules and methodologies do an exceptional job of regulating the installation of response stations, while at the same time allowing installations to proceed without delay. Our engineers have confirmed that the methodologies proposed by the Petitioners are extremely conservative. Indeed, if anything the recent revisions made by the Petitioners to quell concerns may have made the methodologies too conservative, unnecessarily precluding two-way service.

Moreover, and perhaps most importantly, as protective as the proposed technical rules and methodologies are, the Petitioners have recognized that because certain assumptions underlay their proposals that, while conservative, may not apply in every case, situations may develop where impermissible electrical interference occurs that was not predicted. In those situations, the Petitioners have provided the ultimate safety net -- they have proposed in no uncertain terms that any unanticipated interference will have to be cured or the response station will have to cease operations. Particularly in light of this protection, there is no reason to burden the process of deploying MDS and ITFS response stations with any of the additional requirements suggested by CTN.

Because of the conservative nature of the proposed rules and the safety net that the Petitioners have proposed, the Commission should reject calls for limiting response station use to just a few MDS channels or requiring spectrally inefficient guardbands. Our technical staff is confident that so long as the 0 dB adjacent channel desired-to-undesired signal ratio requirement is enforced (and the Petitioners have proposed to retain that requirement), response stations can operate without causing adjacent channel interference. Although CTN has apparently retreated from its initial proposal for a 24 MHz guardband, even its current call for establishment of a 6 MHz guardband is unduly restrictive and could, as a practical matter, preclude many ITFS licensees from ever deploying two-way services on their own channels.

COMWAVE also concurs with the Petitioners that the fears of interference due to brute force overload have been greatly overblown. As the Petitioners have correctly demonstrated, brute force overload will rarely occur (and will never occur where, as in most markets, all MDS and ITFS channels are collocated and response stations will be oriented towards the transmission site). And, the Petitioners have correctly pointed out that there are a host of techniques that can be deployed to prevent any interference before it occurs. Since the Petitioners have proposed rules under which the licensee of the response station will have to cure interference or cease

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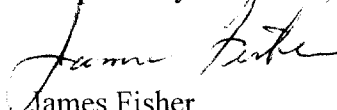
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operating, the licensee has every incentive to carefully engineer the response station and take all necessary protective steps. Moreover, in the unlikely event that interference occurs despite those protective steps, other techniques exist that can be deployed to immediately cure that unanticipated interference. To adopt CTN's burdensome proposals for avoiding even this minuscule risk of interference would be akin to using a neutron bomb to kill a fly.

Finally, COMWAVE must express its concern that this proceeding be resolved as rapidly as possible. As Commissioner Powell has noted several times, even if correct, a decision made too late might as well have never been made. We fear that could prove to be the case here. We strongly agree with the views expressed by American Telecasting, Inc. in its April 9, 1998 *ex parte* letter to Commissioner Powell that time is of the essence if MDS and ITFS channels are to be successfully deployed for two-way services. LMDS, WCS, DEMS, 39 GHz and other services are capable of providing many of the same two-way services that can be provided over MDS and ITFS. Licensees in those services already have a head start (not to mention a far more conducive regulatory environment). If this proceeding is permitted to drag on longer, a window of opportunity for MDS and ITFS licensees to deploy two-way services may pass by. As COMWAVE is strictly in the MMDS business, this delay in technological growth in the digital/2-way arena has been strongly felt through lost revenues as operators are waiting for rulings to be handed down allowing them to move forward to fulfill the much needed services .

Thank you for consideration of COMWAVE's views.

Respectfully submitted,



James Fisher

Vice President, Systems Engineering
COMWAVE

cc: Hon. William E. Kennard
Hon. Susan Ness
Hon. Harold Furchtgott-Roth
Hon. Michael K. Powell
Hon. Gloria Tristani
Roy Stewart
Keith Larson
Barbara Kreisman
Charles Dziedzic
Michael Jacobs
David Roberts